IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9681 of 2004

Between:

1 Sreeram Pattabhiram Gopal, S/o.Guruswamy,
R/o.Chittedu Village, Kota Mandal, Nellore District.
2 Palicherla Venkataiah, S/o.Papaiah,
R/o.Chittedu Village, Kota Mandal, Nellore District.
3 Cheera Pedda Chenchaiah, S/o.Chengaiah,
R/o.Chittedu Village, Kota Mandal, Nellore District.
4 Smt.Nanimala Gunnamma, W/o.Thirupalaiah,
R/o.Chittedu Village, Kota Mandal, Nellore District.
5 Pattapu Krishnaiah, S/o.Peda Venkataswamy,
R/o.Chittedu Village, Kota Mandal, Nellore District.
6 Cheera Guruvamma, W/o.Ramaiah,
R/o.Chittedu Village, Kota Mandal, Nellore District.
7 Dumpala Pondaiah, S/o.Chenchuramaiah,
R/o.Chittedu Village, Kota Mandal, Nellore District.

... PETITIONERS

AND

1 The Assistant Commi.of Endowments, Nellore, Nellore District..
2 The Executive officer, person in Management, Sri Kodandarama Swamy Temple, Chittedu Village, Kota Mandal, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of Mandamus; i) declaring the Notice of the Respondent No.2 dated 7-6-2004 as arbitrary, illegal and violative of the Articles 14, 21 and 300A of the Constitution of India and consequently set aside the same.

Counsel for the Petitioners: MR.A.SUDERSHAN REDDY
Counsel for the Respondent No.1 : GP FOR ENDOWMENTS
Counsel for the Respondent No.2: Smt. N. Indrani.

The Court at the admission stage made the following :

ORAL ORDER:

The petitioners seek a declaration that the action of the second respondent-Executive Officer of Sri Kodandarama Swamy Temple, Chittedu village, Kota Mandal, Nellore District, in putting the leasehold rights of the lands in their possession to auction is arbitrary and illegal.

The case of the petitioners is that they are the lessees in respect of Ac.18-20 cents of land which belong to second respondent-temple and the same has been under their cultivation for the past more than 18 years. It is alleged that the respondent authorities issued a notice, dated 14.05.2003, directing the petitioners to hand over the possession of the lands within 30 (thirty) days. They made a representation before the respondents claiming that they are landless poor. However, without conducting any enquiry as to the status of the petitioners, the leasehold rights of the lands in possession of the petitioners have been put to auction scheduled to be held on 07.06.2004. The petitioners contend that the action of the respondents in proposing to conduct auction without adjudicating their claim that they are landless poor is arbitrary and illegal. It is also pleaded that if the petitioners are dispossessed high-handedly they will be put to irreparable loss.

This Court, while issuing Rule Nisi by order, dated 16.06.2004, directed the respondents not to conduct any auction of the lease hold rights in respect of the land in question. Now, in the counter affidavit filed on behalf of the second respondent, it has been stated that a notice under Rule 5(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Agricultural Lands Rules 2003 (for short, 'Rules') has been issued to the petitioners on 14.05.2003 directing them to deliver the possession of the subject lands within 30 (thirty) days. It is further stated that the petitioners do not fall under the category of landless poor persons and as such they are not entitled for any benefit under the statute. It is also stated that they filed applications before the Assistant Commissioner of Endowments, Nellore claiming determination as landless poor persons and after conducting due enquiry their claim was rejected by the Assistant Commissioner of Endowments, Nellore vide proceedings dated 30th October, 2003, since, the petitioners are holding the land beyond the prescribed limit. It is also stated that since the petitioners failed to challenge the order of the Assistant Commissioner of Endowments, Nellore, they are not entitled to any relief as prayed for.

I have heard the counsel for both parties and perused the material on record.

As can be seen from the counter affidavit, an order has already been passed by the Assistant Commissioner of Endowments, Nellore adjudicating that the petitioners are not landless poor persons. Hence the allegation of the petitioners that there is no enquiry as to their status is unfounded and cannot be accepted. Admittedly, against the said order an appeal lies to the Regional Joint Commissioner under the Rules. The question whether the petitioners are landless poor persons is a question of fact which cannot be decided by this court and it is for the petitioners to avail the alternative remedy of Appeal available under the Statute. In the circumstances, I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioners to prefer an appeal before the Regional Joint

Commissioner against the order of the Assistant Commissioner of Endowments, Nellore, dated 30-10-2003. It is also open to them to seek condonation of delay by filing appropriate application before the appellate authority. Since there is a direction pending the writ petition not to conduct auction in respect of the schedule property, I deem it appropriate to continue the said order till the end of 31st August, 2004. In the meanwhile it is open to the petitioners to take appropriate steps as indicated above.

Accordingly, the Writ Petition is disposed of at the admission stage. No costs.

_____

19th July, 2004.

*Nsr/Ars

Note:

Issue CC within a week.

(B/O)

*Nsr/Ars

To

1 The Assistant Commi.of Endowments, Nellore, Nellore District..

2 The Executive officer, person in Management, Sri Kodandarama Swamy Temple, Chittedu Village, Kota Mandal, Nellore District.

3. Two CCs to G.P for Endowments, High Court Buildings, Hyderabad (OUT)

4. Two CD copies.